

Before the
Administrative Hearing Commission
State of Missouri

2004013375



STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

vs.)

No. 09-1420 PS

CHARLES RHODES,)

Respondent.)

CONSENT ORDER


The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2009, gives us jurisdiction.

On July 28, 2010, the parties filed a joint motion for consent order, joint stipulation of facts, waiver of hearings, and disciplinary order with joint proposed findings of fact and conclusions of law. Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 337.035.2(5), (6), (13) and (15), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo Supp. 2009.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo Supp. 2009.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. RSMo Supp. 2009. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on July 29, 2010.


SREENIVASA RAO DANDAMUDI
Commissioner

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BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

JUL 28 2010

ADMINISTRATIVE HEARING
COMMISSION

STATE COMMITTEE
OF PSYCHOLOGISTS,

Petitioner,

v.

No. 09-1420 PS

CHARLES RHODES
1271 W. 72nd Street
Kansa City, MO 64114-1239

Respondent.

**JOINT MOTION FOR CONSENT ORDER, JOINT STIPULATION OF
FACTS, WAIVER OF HEARINGS BEFORE THE ADMINISTRATIVE
HEARING COMMISSION AND STATE COMMITTEE OF
PSYCHOLOGISTS AND DISCIPLINARY ORDER WITH
JOINT PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission, 1 CSR 15-3.440(3), and pursuant to the terms of §536.060, RSMo. (2000), as it is made applicable to the Administrative Hearing Commission by §621.135, RSMo. (2000), Charles Rhodes ("Respondent") and the State Committee of Psychologists ("Committee") hereby waive the right to a hearing of the above-styled case before the Administrative Hearing Commission and, additionally, the right to a disciplinary hearing before the Committee pursuant to §621.110, RSMo. (Cum. Supp. 2009), and jointly stipulate to the facts and consent to the imposition of disciplinary action against the Respondent's psychology license for violations of statutes and lawful rules and regulations set forth below.

Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by the Committee in this case, and the parties submit to the jurisdiction of the Administrative Hearing Commission.

Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the Administrative Hearing Commission prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided the Respondent by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission, State Committee of Psychologists and Disciplinary Order with Joint Proposed Findings of Fact and Conclusions of Law ("Joint Stipulation") and agrees to abide by the terms of this document as they pertain to Respondent.

Respondent acknowledges that he has received a copy of the Complaint in this cause which was filed with the Administrative Hearing Commission. Respondent stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the Committee that his license, No. 2004013375, is subject to disciplinary action by the Division in accordance with the provisions of Chapter 621, RSMo, and §337.035, RSMo.

Based upon the foregoing, the Committee and Respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law:

Joint Proposed Findings of Facts

1. Petitioner, the State Committee of Psychologists ("Committee"), is an agency of the State of Missouri created and established pursuant to Section 337.050, RSMo (2000), for the purpose of executing and enforcing the provisions of Chapter 337 RSMo (2000) relating to psychologists.

2. The Committee is within the Division of Professional Registration which is within the Department of Insurance.¹ Pursuant to §337.050.9, RSMo, the Committee has the authority to promulgate "Ethical Rules of Conduct" along with the division's authority to adopt rules and regulations to carry out the provisions of §§ 337.010 to 337.090, which states:

9. In addition to the powers set forth elsewhere in sections 337.010 to 337.090, the division may adopt rules and

¹ The Division of Professional Registration was transferred to the Department of Insurance pursuant to Executive Order 06-04.

regulations, not otherwise inconsistent with sections 337.010 to 337.090, to carry out the provisions of sections 337.010 to 337.090. The committee may promulgate, by rule, "Ethical Rules of Conduct" governing the practices of psychology which rules shall be based upon the ethical principles promulgated and published by the American Psychological Association.

3. Respondent, Charles Rhodes ("Respondent") was licensed by the Committee as a psychologist, license number, ~~20004013375~~ ²⁰⁰⁴⁰¹³³⁷⁵. Respondent's license was surrendered on or about September 8, 2006. At all times relevant herein, Respondent's license was current and active.

4. L.S. and her husband sought and received marital therapy and counseling from Respondent in June of 2000. After her divorce, L.S. continued to see Respondent for individual therapy.²

5. Respondent had a relationship of professional trust and confidence with L.S. in that L.S. relied on Respondent to use his special knowledge and skills as a psychologist to practice in accordance with the laws and acceptable standards of care pertaining to the practice of psychology.

6. From about January of 2000 to on or about May 2001, Respondent provided psychotherapy to A.F.; thereby, establishing a psychologist-patient relationship with A.F. At all times relevant herein, Respondent had a psychologist-patient relationship with A.F., or had a professional ethical responsibility to A.F., a client who was seeking marital counseling with her then husband before she continued with individual therapy.

² In order to protect patient L.S. and A.F.'s privacy, they will be referred throughout this Joint Stipulation by their initials.

7. Respondent had a relationship of professional trust and confidence with A.F., in that A.F. relied on Respondent to use his special knowledge and skills as a psychologist to practice in accordance with the laws and acceptable standards of care pertaining to the practice of psychology.

8. Respondent began dating A.F. in November of 2001, which soon culminated into a sexual relationship. Respondent and A.F. continued this relationship for a period of almost five years, ending about August of 2006.

9. From the beginning of the relationship, Respondent told A. F. that they had to keep the relationship secret, because there could be professional repercussions. The relationship was eventually revealed to A. F.'s children, but they (the children) were to keep the relationship between Respondent and A. F. a secret. Eventually the relationship became public knowledge.

10. Respondent's conduct as alleged herein was deliberate.

11. During the course of Respondent's sexual relationship with A.F., Respondent revealed confidential professional information of other clients to A.F.

12. Respondent, on a number of occasions, shared personal, confidential information with A.F. about some of his clients who A.F. knew personally, or knew of.

13. On one such occasion, Respondent shared with A.F. that a friend of a friend of hers, L.S., had an affair with an old school friend at a class reunion.

14. L.S. began seeing Respondent in June of 2000 for marriage therapy. After her divorce, she continued to see Respondent for individual therapy. She ended her therapy in April of 2006 after she felt Respondent was not giving her much guidance in her therapy.

Further, L.S. heard that Respondent was dating a former client and that her own confidentiality had been breached.

15. This breach of L.S.'s confidential personal information caused L.S. to be concerned about what other possible breaches of confidentiality of personal information she shared during the course of her therapy with Respondent might have occurred.

16. Respondent in a telephone conversation with L.S. apologized for continuing to see her when he was "Messed Up."

17. Respondent's conduct was deliberate.

18. Respondent's conduct as alleged herein violated L.S.'s professional trust and confidence.

19. A.F. requested a copy of her records from Respondent in or about February 2007. Respondent addressed A.F.'s request by sending her a few records of a Doctor's Orders, a mental status exam page and three Treatment Plan pages. A.F. had eight sessions that she attended with her then husband, covered by insurance. Thereafter A.F. had additional sessions with Respondent individually. Respondent failed to provide all the records requested. Respondent was unable or unwilling to provide the requested records.

20. L.S. requested of Respondent that Respondent provide her with a full copy of her records, dated on or about February 1, 2007. Respondent provided her with a summary dated February 20, 2007 and a few pages of records from June, 2000 and February, 2002.

21. L.S. treated with Respondent from June 2000 until April of 2006. She had approximately 119 sessions with Respondent. Several of L.S.'s sessions were two hours

long. Respondent failed to provide all the records requested. Respondent was unable or unwilling to provide the requested records.

22. Respondent continued to see L.S. professionally for months after he last provided any treatment plan. Respondent failed to provide L.S. with any updates on L.S.'s treatment. Respondent's usual response would be that he would see her next time.

Joint Proposed Conclusions of Law

1. Regulation 20 CSR 2235-5.030 constitutes the "Ethical Rules of Conduct" as adopted by the Committee and filed with the Secretary of State. Subsection (1) (D) of this regulation provides:

(D) Violations. A violation of these ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action or denial of either original licensure, reinstatement or renewal of licensure.

Further, Regulation 20 CSR 2235-5.030 (13) (A) provides:

(A) Violations of Applicable Statutes. The psychologist shall not violate any applicable statute or administrative rule regarding the practice of psychology.

2. Respondent's conduct as alleged herein violates Regulation 20 CSR 2235-5.030(6)(C)(2), (A), (B), (C) and (G), which provides:

(6) Multiple Relationships.

...

(C) Prohibited Relationships.

...

2. The psychologist, in interacting with any current client or with a person to whom the psychologist at any time

within the previous sixty (60) months has rendered counseling, psychotherapeutic or other professional psychological services for the treatment or amelioration of emotional distress or behavioral inadequacy, shall not –

A. Engage in sexual intercourse, which includes any genital contact of the psychologist with the client or the client with the psychologist. This specifically prohibits sexual intercourse, . . . ;

B. Engage in kissing with the mouth, lips or tongue of the psychologist with the client or the client with the psychologist;

C. Touching or caressing by either the psychologist or client of the other person's breast, genitals or buttocks;

...

G. Engage in any verbal or physical behavior toward him/her which is sexually seductive . . . ;

...

3. Respondent's conduct as alleged herein also violates 20 CSR 2235-5030(7)(E) which provides:

...

(7) Client Welfare.

...

(E) Sexual or Other Multiple Relations With a Client.
The psychologist shall not enter into a sexual or other multiple relationship with a client, as specified in subsections (6)(B) and (C) of these ethical rules of conduct.

4. Respondent's conduct as alleged herein violates Regulation 20 CSR 2235-5.030(9)(B) which provides:

(9) Protecting Confidentiality of Clients.

- ...
- (B) Safeguarding Confidential Information. The psychologist shall safeguard the confidential information obtained in the course of practice, teaching, research or other professional duties.
- ...

5. Respondent's conduct as alleged herein constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a psychologist.

6. Respondent's conduct as alleged herein violated professional trust and confidence placed in Respondent by L.S. and A.F.

7. Respondent's conduct as alleged herein violates Regulation 20 CSR 2235-5.030(4)(A) and (B) which provides:

(4) Maintenance and Retention of Records.

(A) The psychologist rendering professional individual services to a client (or a dependent), or services billed to a third party payer, shall maintain professional records that include:

1. Name of the client and other identifying information such as address, telephone number, age, and/or sex;
2. The presenting problem(s) or purpose or *diagnosis*;
3. Any assessment including test results or other evaluative results obtained and any basic test data from which they were derived;
4. The date and description of each contact or service provided or pertaining to the client;
5. The nature, type and goals of any psychological interventions;
6. The fee arrangement and documentation of discussion with client prior to initiation of services;

7. A copy of all test or other evaluative reports prepared as part of the professional relationship;

8. Notation and results of formal consults with other providers;

9. Notation of referrals given or recommended to the client;

10. Any releases executed by the client;

11. Records shall contain data relating to financial transactions between the psychologist and client, including fees assessed and collected;

12. Written informed consent must be obtained concerning all aspects of services including assessment and therapy;

13. A provisionally licensed psychologist must include on the informed consent the fact that the provisional licensee is working under the supervision of a licensed psychologist. The informed consent form must identify the supervising psychologist; and

14. Entries in the records must be made within ten (10) days following each consultation or rendition of service. Entries that are made after the date of service must indicate the date entries are made, as well as the date of service.

(B) To meet the requirements of these rules, but not necessarily for other legal purposes, the psychologist shall assure that all data entries in the professional records are maintained for a period of not fewer than five (5) years after the last date of service rendered, or not less than the time required by other regulations, if that is longer.

8. Respondent's conduct as alleged herein violates Regulation 20 CSR 2235-

5.030 (6)(A) and (7)(A) and (C) which provides:

(6) Multiple Relationships.

(A) Impaired Psychologist. The psychologist shall not undertake or continue a professional relationship with a client when the competency of the psychologist, is or could reasonably be expected to be impaired due to mental, emotional, physiologic, pharmacologic or substance abuse conditions. If a condition develops after a professional relationship has been initiated, the psychologist shall terminate the relationship in an appropriate manner, shall notify the client in writing of the

termination and shall assist the client obtaining services from another professional.

(7) Client Welfare.

(A) Providing Explanation of Procedures.

1. The psychologist shall give a truthful, understandable and reasonably complete account of the client's condition to the client or the parent of minor children or legal guardian. The psychologist shall keep the client fully informed as to the purpose and nature of any evaluation, treatment or other procedures, and of the client's right to freedom of choice regarding services provided.

...

(C) Unnecessary Service. The psychologist shall not exploit clients by providing unnecessary psychological service.

9. Cause exists to discipline Respondent's psychologist license pursuant to §337.035.2(5), (6), (13) and (15), which provides:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by Chapter 621, RSMo, against any holder of any . . . license required by this chapter . . . for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulations adopted pursuant to this chapter;

...

(13) Violation of any professional trust or confidence;

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

Joint Proposed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of § 621.110, RSMo 2000. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Administrative Hearing Commission without further action by either party:

1. Respondent's license as a psychologist, No. 2004013375, is hereby REVOKED. Respondent shall return all copies and originals of Respondent's psychologist license, wall hanging, and wallet certificate to the State Committee of Psychologists on or before the effective date of this revocation.

2. The parties to this Joint Stipulation understand that the State Committee of Psychologists will maintain this Joint Stipulation as an open and public record of the Committee as provided in Chapters 610 and 620, RSMo.

3. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

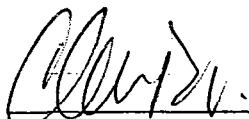
4. Respondent hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of this Joint Stipulation in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation or any portion thereof void or unenforceable.

5. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and its settlement.

6. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Commission without further action by either party.

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Disciplinary Order and to the termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by Petitioner in the above-styled action.

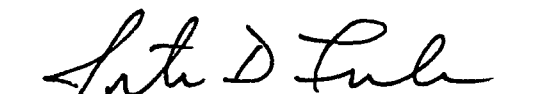
RESPONDENT



CHARLES D. RHODES

Date: 7/6/10

HORN AYLWARD & BANDY, LLC


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ATTORNEYS FOR RESPONDENT


PETITIONER



PAMELA GROOSE
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